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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In Re:	)	BK-S – 09-50616-GWZ
	)	Chapter 13
SALVADOR LEON GARCIA and	)	
MARIA TERESITA GARCIA	)	Date: 10/9/2009
Debtor(s).	)	Time: 1:30 P.M.

**OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW, SALVADOR LEON GARCIA and MARIA TERESITA GARCIA  
(hereinafter “Debtors”), by and through their attorney, HAROLD C. COMANSE, ESQ., and  
Oppose the Motion for Relief from Stay as follows:

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I  
FACTS**

1. Debtors filed the above captioned Chapter 13, case number 09-50616-gwz on March 10, 2009.
2. On the petition date, Debtors owned real property located at 3251 Platte River Court, Reno, Nevada, 89503 (hereinafter “PLATTE RIVER COURT”).
3. On June 22, 2009, an Order Confirming Debtors’ Chapter 13 Plan was entered on docket.
4. On September 9, 2009, a Motion for Relief from Stay was filed by WILDE & ASSOCIATES on behalf of alleged secured creditor Deutsche Bank National

Trust Company as Trustee under Pooling and Servicing Agreement Dated February 1, 2005 MORGAN STANLEY ABX CAPITAL 1 INC. 2005-NC1. TRUST 2005-NC1 MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2005-NC1 (hereinafter "DEUTSCHE BANK").

5. Attached to the motion for relief is a copy of a "NOTE" identifying "New Century Mortgage Corporation" as the lender on PLATTE RIVER COURT.
6. Also attached to the Motion for Relief from Stay is a copy of a "DEED OF TRUST" identifying "New Century Mortgage Corporation" as the beneficiary of the Deed of Trust on PLATTE RIVER COURT.
7. The Exhibits to the Motion for Relief from Stay do not contain evidence of an assignment from New Century Mortgage Corporation of its interest in the "NOTE" and "DEED OF TRUST" to DEUTSCHE BANK.
8. The Motion for Relief from Stay on behalf of DEUTSCHE BANK is not supported by a Declaration.

## II ARGUMENT

As set forth in the recent decision by the Honorable Linda B. Riegle in *In Re Joshua & Stephanie Mitchell*, Case No. 07-16226-LBR (Bankr. Nev., 2009), DEUTSCHE BANK "must have both constitutional and prudential standing, and be the real party in interest under FED. R. CIV. P. 17, in order to be entitled to lift-stay relief."

In the Motion for Relief from Stay DEUTSCHE BANK alleges it is the current payee of the promissory note secured by deed of trust on PLATTE RIVER COURT. The Motion for Relief from Stay, however, contains no evidence to establish that DEUTSCHE BANK is the real party in interest entitled to lift-stay relief.

1 DEUTSCHE BANK is not named as the as the lender on the Note on PLATTE RIVER COURT  
2 attached to the Motion, nor as the beneficiary of the Deed of Trust on PLATTE RIVER COURT  
3 also attached.  
4

5 Furthermore, DEUTSCHE BANK has not provided proof of any assignment from New  
6 Century Mortgage Corporation of its interest in the "NOTE" and "DEED OF TRUST" to  
7 DEUTSCHE BANK.

8 In this case, DEUTSCHE BANK has not demonstrated that it has both constitutional and  
9 prudential standing required to be the real party in interest under FED. R. CIV. P. 17.  
10 Accordingly, this Honorable Court should find DEUTSCHE BANK is not entitled to lift-stay  
11 relief. Therefore, the Motion for Relief from Stay should be denied.  
12

13 **III**  
**CONCLUSION**

14 WHEREFORE, the Debtors pray this Court:

- 15 1. DENY the Motion for Relief from Stay; and  
16 2. For such other relief the Court finds appropriate.  
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18 DATED, this 15 day of September 2009.

19 RESPECTFULLY SUBMITTED:

20 /S/ HAROLD C. COMANSE, ESQ.

21 HAROLD C. COMANSE, ESQ.

22 Attorney for Debtors  
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